

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Business Meeting)
)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 25, 2004
10:03 A.M.

Reported by:
Alan Meade
Contract No. 150-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William J. Keese, Chairman

James D. Boyd

John L. Geesman

STAFF and CONSULTANTS PRESENT

Robert Therkelsen, Executive Director

William Chamberlain, Chief Counsel

Song Her, Secretariat

Lance Shaw

Chuck Najarian

Ila Lewis

Rick Buckingham

Ricardo Amon

James Lee

Elaine Hussey

PUBLIC ADVISER

Margret Kim

ALSO PRESENT

Mark Osterholt, Director, Business Operations
Mirant California, LLC

Michael J. Carroll, Attorney
Latham and Watkins
representing Mirant California, LLC

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P R O C E E D I N G S

10:03 a.m.

CHAIRMAN KEESE: Call this meeting of the Energy Commission to order. Commissioner Boyd, would you lead us in the Pledge, please.

(Whereupon the Pledge of Allegiance was recited in unison.)

CHAIRMAN KEESE: Good morning. As we get started, and for those who are listening in the building, this afternoon at 4:00 Senator Byron Sher will be coming in this room to speak about his years in the Legislature related to energy issues. Staff is invited to join us down here at about 3:45 for cake prior to Senator Sher coming in and speaking to us.

Consent calendar, do I have a motion?

COMMISSIONER GEESMAN: So moved.

COMMISSIONER BOYD: Second.

CHAIRMAN KEESE: Motion, Geesman; second, Boyd.

All in favor?

(Ayes.)

CHAIRMAN KEESE: Opposed? Adopted three to nothing.

Commissioners Pfannenstiel and Rosenfeld

1 are at a CEEE conference today and will not be
2 joining us.

3 Item 2, Los Esteros Critical Energy
4 Facility. Petition for ownership change from
5 Calpine C*Power to Los Esteros Critical Energy
6 Facility, LLC, a wholly owned subsidiary of
7 Calpine Corporation.

8 Good morning, Lance.

9 MR. SHAW: Good morning, Commissioners
10 and all present. Los Esteros Critical Energy
11 Facility was certified July 2, 2002; became
12 operational March 7, 2003.

13 This is a 180 megawatt, natural gas-
14 fired, simple cycle plant located in San Jose in
15 Santa Clara County owned and operated by Calpine
16 C*Power.

17 Calpine submitted a petition on March
18 26, 2004 to request that CEC change the ownership
19 to Los Esteros Critical Energy Facility, LLC. The
20 petition for change of ownership meets all the
21 requirement of 1769(b) of the California Code of
22 Regulations; and contains a statement signed by a
23 representative of the new owner that the new
24 owner/operator understands the conditions of
25 certification and agrees to comply with these

1 conditions.

2 The notice of receipt was mailed on July
3 22, 2004. The petition and the notice of receipt
4 were posted on the Commission's website on July 15
5 and 23rd respectively. No public comment has been
6 received.

7 The petition meets all the requirements
8 of the following: filing for 1769(b) of California
9 Code of Regulations.

10 Staff recommends that the Commission
11 approve the request.

12 CHAIRMAN KEESE: Thank you.

13 COMMISSIONER GEESMAN: Mr. Chairman.

14 CHAIRMAN KEESE: Commissioner Geesman.

15 COMMISSIONER GEESMAN: This matter was
16 reviewed by the Siting Committee. I would move
17 that we approve it.

18 CHAIRMAN KEESE: Motion, Geesman.

19 COMMISSIONER BOYD: Second.

20 CHAIRMAN KEESE: Second, Boyd. Any
21 public comment?

22 All in favor?

23 (Ayes.)

24 CHAIRMAN KEESE: Opposed? Adopted three
25 to nothing.

1 Item 3, Golden Sierra Power, has been
2 withdrawn from the agenda at this time.

3 Item 4, Contra Costa Power Plant Unit 8.
4 Possible approval of a petition filed by Mirant
5 Delta, LLC, to extend CCPP8 construction
6 milestones to a commercial operation date of
7 November 2006. Good morning.

8 MR. NAJARIAN: Good morning. Chuck
9 Najarian; I'm the Compliance Program Manager for
10 the Energy Commission.

11 This item concerns a request by Mirant
12 to delay construction milestones for their Contra
13 Costa Unit 8 Power Plant project for a second
14 time. That would also involve a subsequent delay
15 to their online date.

16 Contra Costa Unit 8 was certified in May
17 of 2001. It's a 530 megawatt, natural gas-fired,
18 combined cycle power plant located in the City of
19 Antioch.

20 Construction of the project was halted
21 in February of 2002 and has remained in suspension
22 since that time.

23 The decision specifies that construction
24 milestones be established, and that staff may
25 modify milestones if Mirant demonstrates good

1 cause.

2 The decision goes on to say that failure
3 to meet milestone dates without a finding of good
4 cause is considered cause for possible forfeiture
5 of the certificate and other penalties.

6 The original milestones establish an
7 August 2003 online date. In December of 2002
8 staff approved Mirant's first request to delay
9 construction milestones, which resulted in a new
10 online date of June of 2005. In granting this
11 delay staff also required that Mirant seek full
12 Commission approval for any subsequent delays.

13 Mirant's second request to delay
14 construction milestones specified a November 2006
15 online date. Mirant has filed for reorganization
16 under the chapter 11 of the Bankruptcy Code, and
17 is actively negotiating with the California
18 Attorney General's Office to settle disputes
19 concerning their business practices in California.

20 The settlement could result in a
21 transfer of ownership to a third party. Transfer
22 could be jeopardized if the milestones are not
23 delayed, because the status of the certificate
24 would be in question.

25 Staff has considered Mirant's request

1 and believes good cause exists to delay
2 construction milestones because of ongoing
3 electricity market conditions, Mirant's chapter 11
4 bankruptcy, and most importantly, Mirant's
5 negotiations with the Attorney General's Office
6 that could lead to transfer of ownership to a
7 third party. And we would assume at that point
8 construction of the project would be complete and
9 the project would be operated.

10 Therefore staff recommends the
11 Commission consider approving the new construction
12 milestones.

13 Mark Osterholt and Mike Carroll are here
14 today representing Mirant. And I understand
15 they're prepared to make a statement for the
16 record and answer any questions you might have.

17 CHAIRMAN KEESE: Thank you. Gentlemen.

18 MR. CARROLL: Good morning. Mike
19 Carroll with Latham and Watkins on behalf of
20 Mirant. Mark Osterholt with Mirant is also here
21 with me.

22 Staff has done a very good job in the
23 presentation this morning and in the staff report
24 outlining the facts. And I don't have too much to
25 add and won't reiterate the background on this

1 matter.

2 I would simply support the staff
3 conclusion that we believe that there are three
4 independent bases on which the Commission can find
5 that good cause exists to extend the construction
6 milestones.

7 The first two being the bases upon which
8 the milestones were extended the first time in
9 December of '02, which continue to exist today.
10 Those being the financial condition of the
11 company, which, if anything, has deteriorated to
12 some extent since we were here in December of '02,
13 in light of the fact that the company is now in
14 chapter 11 bankruptcy.

15 The second being the continued flux in
16 the California power market, which I think is not
17 any more less in flux than it was when we were
18 here in December of 2002, in terms of the company
19 being able to reach a conclusion that an adequate
20 return on investment could be achieved.

21 And then the third being something that
22 wasn't present when we were before the staff in
23 2002 seeking the first request, which are the
24 ongoing discussions with the State of California,
25 which all the parties are hopeful will lead to

1 resolution of existing disputes between the state
2 and the company. A critical component of which
3 may end up being the transfer of this project to a
4 third party for future development.

5 All the parties to those negotiations
6 have a keen interest in insuring that this
7 continues to be a viable project which could be
8 picked up by a third party and moved forward.

9 So we concur with the staff that on all
10 or any one of those three bases the Commission
11 could find that there's good cause to extend the
12 milestones; and would ask that the Commission do
13 so, consistent with the staff report.

14 Thank you very much.

15 CHAIRMAN KEESE: Thank you. Any
16 comments here? Any public comment? Commissioner
17 Geesman.

18 COMMISSIONER GEESMAN: Well, I'd simply
19 say that this matter has been reviewed by the
20 Siting Committee and I would recommend that we
21 approve the staff recommendation.

22 CHAIRMAN KEESE: That's a motion to
23 approve.

24 COMMISSIONER BOYD: Second.

25 CHAIRMAN KEESE: Second, Commissioner

1 Boyd. Any public comment?

2 Hearing none, all in favor?

3 (Ayes.)

4 CHAIRMAN KEESE: Opposed? Adopted three
5 to nothing. Thank you.

6 MR. NAJARIAN: Thank you.

7 CHAIRMAN KEESE: Item 5, Otay Mesa
8 Generating Project. Petition to revise the Otay
9 Mesa Generating Project air quality condition of
10 certification AQ-75 in order to delay the required
11 1.2 million air quality mitigation fee to be paid
12 to the San Diego Air Pollution Control District.
13 Good morning.

14 MS. LEWIS: Good morning. My name is
15 Ila Lewis; I'm the Compliance Project Manager for
16 the Otay Mesa Generating Project.

17 In April of 2001 the Commission
18 certified the Otay Mesa project as a nominal 590
19 megawatt, combined cycle, natural gas-fired power
20 plant located in San Diego County.

21 Calpine is in the process of negotiating
22 a long-term power purchase contract with SDG&E.
23 In July of 2002 their General Electric turbines
24 were delivered to the project site. In September
25 of 2002 plant site construction was initiated.

1 Construction work has been limited.
2 Some excavation work is ongoing. Gas pipeline
3 construction, access road construction has been
4 completed.

5 The air quality condition of
6 certification requires -- AQ-75 requires that
7 Calpine pay \$1.2 million as a mitigation fee to
8 the Air District for potential PM10 and PM10
9 precursor impacts. The verification originally
10 required that the payment be made in two
11 installments with the first .6 million due no
12 later than the date of delivery of the first
13 combustion turbine. And the second payment due no
14 later than six months after the date of the
15 delivery of the first combustion turbine to the
16 project site.

17 In March of 2003 Calpine requested a
18 verification change to postpone payment because
19 the turbines were not being installed, had no
20 potential to emit, and cheaper to store the
21 turbines onsite rather than with the turbine
22 manufacturer, which would be General Electric.

23 In May of 2003 staff approved the
24 verification change to allow Calpine to postpone
25 the \$1.2 million payment, to be paid in full no

1 later than October 31st of 2003. This due date
2 was based on potential construction schedule and
3 power purchase negotiations. The postponement
4 still met the original intent of the condition.

5 On June 17th of 2004 Calpine submitted a
6 petition to revise AQ-75 once again. Staff and
7 Calpine agreed to the following: That a consumer
8 price index based escalator be applied to the \$1.2
9 million air quality mitigation fee. The escalator
10 shall be applied from June 2003 until the most
11 recent semi-annual San Diego CPI data available
12 prior to the date of the payment. The payment
13 shall be made no later than 14 months prior to the
14 first fire of either combustion turbine or October
15 31, 2006, whichever comes first. Calpine will
16 provide a letter from the District APCO indicating
17 receipt of payment.

18 In February we determined that the Air
19 District also concurs with this approach.

20 Staff recommendation is that the
21 Commission approve the petition to revise AQ-75 to
22 delay payment of air quality mitigation fees with
23 associated escalation fees.

24 Any questions?

25 CHAIRMAN KEESE: The only question I

1 had, did the Air District agree to this?

2 MS. LEWIS: Yes, they did.

3 CHAIRMAN KEESE: Before we did? Or --

4 MS. LEWIS: During the discussions as to
5 how we were going to approach the payment there
6 were many discussions with the air quality
7 district and they agreed.

8 CHAIRMAN KEESE: Thank you. That is
9 before us.

10 COMMISSIONER GEESMAN: Mr. Chairman.

11 CHAIRMAN KEESE: Commissioner Geesman.

12 COMMISSIONER GEESMAN: The matter was
13 considered by the Siting Committee and I would
14 move that we approve the staff recommendation.

15 COMMISSIONER BOYD: Second.

16 CHAIRMAN KEESE: Motion, Geesman;
17 second, Boyd. Any other public comment?

18 All in favor?

19 (Ayes.)

20 CHAIRMAN KEESE: Opposed? Adopted three
21 to nothing.

22 MS. LEWIS: Thank you.

23 CHAIRMAN KEESE: Thank you. Item 6,
24 Western Interstate Energy Board. Possible
25 approval of contract 150-04-004 for \$36,000 to pay

1 the annual membership dues and meeting fees for
2 membership in the Western Interstate Energy Board
3 through June 30th of 2005. Mr. Buckingham.

4 MR. BUCKINGHAM: Good morning,
5 Commissioners. My name is Rick Buckingham. I'm
6 here in place of Mr. Tomashefsky today.

7 We come to you to request approval for
8 the \$36,000 as an annual membership due for the
9 CEC's membership in the Western Interstate Energy
10 Board, or WIEB.

11 WIEB is an organization of 12 western
12 states and three western Canadian provinces. It
13 also serves as the energy arm of the Western
14 Governors Association.

15 Our request today is for the annual
16 membership due in order to continue our ongoing
17 participation in the many forums of WIEB. I'm
18 here to answer any questions you may have.

19 COMMISSIONER GEESMAN: So moved, Mr.
20 Chairman.

21 CHAIRMAN KEESE: Motion, Geesman.

22 COMMISSIONER BOYD: Second.

23 CHAIRMAN KEESE: Second, Boyd. Any
24 public comment?

25 All in favor?

1 (Ayes.)

2 CHAIRMAN KEESE: Opposed? Adopted three
3 to nothing.

4 Item 7 has been withdrawn and is now
5 scheduled for hearing on September 22nd.

6 Item 8, Health and Welfare Agency Data
7 Center. Possible approval of contract 200-04-003
8 for \$131,000 to perform three years worth of data
9 processing services necessary to meet CALSTARS
10 accounting system requirements. Good morning.

11 MR. LEE: Good morning, Commissioners.
12 My name is James Lee. I'm here on behalf of Mark
13 Jones.

14 This item requests the approval of an
15 agency agreement with the Health and Welfare Data
16 Center, to provide the accounting system --
17 support for accounting system. This including the
18 data collection, financial reports.

19 This agreement covers about three years
20 of support at a (inaudible) cost of \$45,000 a
21 year.

22 That's all. Any questions?

23 CHAIRMAN KEESE: Not from --

24 COMMISSIONER GEESMAN: Move approval,
25 Mr. Chairman.

1 COMMISSIONER BOYD: Second.

2 CHAIRMAN KEESE: Motion, Geesman.

3 Second, Boyd.

4 All in favor?

5 (Ayes.)

6 CHAIRMAN KEESE: Opposed? Adopted.

7 Thank you.

8 MR. LEE: Thank you.

9 CHAIRMAN KEESE: Item 9, Southern
10 California Edison Company. Possible approval of
11 contract R400-04-004 to accept \$300,000 from
12 Southern California Edison Company to fund and
13 manage a study of opportunities for increasing
14 energy efficiency in the existing buildings in
15 California.

16 As you'll recall, Members, we spent the
17 money at our last meeting subject to its receipt
18 at this meeting.

19 MS. HUSSEY: Thank you, Chairman Keese.
20 My name is Elaine Hussey, the Contract Manager for
21 this contract. It would transfer \$300,000 in
22 energy efficiency public goods charge fund from
23 the CPUC through SCE to us to pay for the contract
24 you approved two weeks ago. Partially pay; we
25 have \$80,000 of our own money invested in that

1 contract, as well.

2 CHAIRMAN KEESE: Thank you.

3 COMMISSIONER BOYD: Mr. Chairman, I move
4 approval.

5 CHAIRMAN KEESE: Motion, Boyd.

6 COMMISSIONER GEESMAN: Second.

7 CHAIRMAN KEESE: Second, Geesman.

8 All in favor?

9 (Ayes.)

10 CHAIRMAN KEESE: Opposed? Adopted three
11 to nothing. Always nice to take money, or receive
12 it, I should say.

13 Item 10, minutes of August 2nd and
14 August 11th.

15 COMMISSIONER BOYD: Move approval.

16 CHAIRMAN KEESE: Motion, Boyd.

17 COMMISSIONER GEESMAN: Second.

18 CHAIRMAN KEESE: Second, Geesman.

19 All in favor?

20 (Ayes.)

21 CHAIRMAN KEESE: Three to nothing.

22 Commission Committee and Oversight.

23 Chief Counsel's Report.

24 MR. CHAMBERLAIN: Yes, Mr. Chairman. I
25 just want to mention an item that I'm sure you're

1 aware of, which is the CPUC's decision to
2 establish -- well, to delegate to this agency the
3 responsibility for a natural gas Public Interest
4 Research program.

5 And to indicate that our office is
6 involved right now in trying to resolve issues
7 related to obtaining the funds that were approved
8 for administration of that program in time to
9 properly report back to the PUC according to their
10 decision on October 31st the projects that we
11 would propose to go forward in the first year of
12 that program.

13 If there are any questions about that I
14 believe David Abelson is -- no, he's left. Well,
15 in any case, just let me know and I'll have him
16 answer those questions.

17 COMMISSIONER BOYD: Mr. Chairman, Mr.
18 Chamberlain, the Natural Gas Committee had quite a
19 discussion of this subject yesterday. I'm sorry
20 Mr. Abelson's not here to thank him for all the
21 work that we know he did on the subject.

22 We, in furtherance of the deadlines you
23 referenced, gave charter to the various staff
24 members to get on this right away and to put a
25 proposal together. And to continue the

1 discussions with the PUC Staff over the details of
2 how they want to proceed here. Hopefully it will
3 be fairly simple, but thank you.

4 CHAIRMAN KEESE: -- Commissioner Geesman
5 would like to be brief.

6 COMMISSIONER GEESMAN: The R&D Committee
7 had a similar session, I believe the week before
8 last, in which Mr. Abelson participated. And I
9 think that it was our general direction that in
10 recognition of the tightness of the PUC deadline,
11 that ultimately the Commission passed a resolution
12 delegating review of the proposals we make to
13 three of our Committees, the R&D Committee, the
14 Natural Gas Committee and the Energy Efficiency
15 Committee.

16 And that in doing so you will pick up
17 all five of us and better facilitate meeting the
18 October 31st deadline than having to be on a mid
19 October business meeting agenda by which you'd get
20 full Commission approval.

21 So, at some point either in September or
22 early in October we ought to have a resolution
23 that formalizes that.

24 CHAIRMAN KEESE: Thank you. Executive
25 Director's Report.

1 MR. THERKELSEN: Good morning,
2 Commissioners. Our office is glad Bill's office
3 is involved in this item.

4 The only thing that I had was we do have
5 an energy action plan joint hearing scheduled for
6 the afternoon of September the 8th. That would be
7 following our business meeting. We begin at 1:30.

8 The proposal from the Steering Committee
9 is that we basically give reports on all of the
10 items that the AP has before it, you know, the
11 whole range of items. And basically report on
12 what the accomplishments have been and identify
13 initiatives that may be considered for looking
14 toward the future.

15 And that was all that I've got to
16 report.

17 CHAIRMAN KEESE: Thank you. And I would
18 note for the interested members of the audience
19 that meeting is scheduled to start at 1:30 and
20 will last till 5:00 or so. It will be a full day.

21 MR. THERKELSEN: It will be located
22 here.

23 CHAIRMAN KEESE: Legislative Director's
24 Report. We will hear what the outcome of the
25 machinations across the street are at our next

1 meeting.

2 Public Adviser's Report.

3 MS. KIM: I have nothing.

4 CHAIRMAN KEESE: Public comment? Seeing
5 none, this meeting is adjourned. We'll see
6 everybody here at 4:00.

7 (Whereupon, at 10:24 a.m., the business
8 meeting was adjourned.)

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CERTIFICATE OF REPORTER

I, ALAN MEADE, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Business Meeting; that it was
thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
meeting, nor in any way interested in outcome of
said meeting.

IN WITNESS WHEREOF, I have hereunto set
my hand this 27th day of August, 2004.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345